

Department of State

§ 120.18

§ 120.12 Office of Defense Trade Controls.

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§ 120.13 United States.

United States, when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.14 Person.

Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.16) or U.S. person (§ 120.15), then it refers to both.

§ 120.15 U.S. person.

U.S. person means a person (as defined in section 120.14 of this part) who is lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in section 120.16 of this part.

[59 FR 25811, May 18, 1994]

§ 120.16 Foreign person.

Foreign persons means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other en-

tity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

[59 FR 25811, May 18, 1994]

§ 120.17 Export.

(a) *Export* means:

(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or

(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or

(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

(b) [Reserved]

§ 120.18 Temporary import.

Temporary import means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or

country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

§ 120.19 Reexport or retransfer.

Reexport or *retransfer* means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

§ 120.20 License.

License means a document bearing the word license issued by the Director, Office of Defense Trade Controls or his authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

§ 120.21 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

- (a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or
- (b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

§ 120.22 Technical assistance agreement.

An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, § 120.21 is applicable. (See part 124 of this subchapter).

§ 120.23 Distribution agreement.

An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

§ 120.24 Port Directors.

Port Directors of U.S. Customs and Border Protection means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York where their title is the Area Directors).

[70 FR 50959, Aug. 29, 2005]

§ 120.25 Empowered Official.

(a) *Empowered Official* means a U.S. person who:

- (1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
 - (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
 - (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
 - (4) Has the independent authority to:
 - (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and
 - (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
 - (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.
- (b) [Reserved]

§ 120.26 Presiding Official.

Presiding Official means a person authorized by the U.S. Government to conduct hearings in administrative proceedings.

§ 120.27 U.S. criminal statutes.

- (a) For purposes of this subchapter, the phrase *U.S. criminal statutes* means:
 - (1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);
 - (2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);